

Comments from the California Climate Action Registry

Background

This regulation sets forth a process by which the California Energy Commission qualifies Technical Assistance Providers and Certifiers for the California Climate Action Registry. Since 2001, the California Energy Commission has led, with the partnership and cooperation of the California Climate Action Registry, two rounds of RFAs to solicit and approve Certifiers for the California Climate Action Registry. Currently, there are nine approved Certifiers for the Registry. In spring 2003, the Energy Commission suspended further approvals of Technical Providers and Certifiers until a Rulemaking formalizing the process could be adopted. Although the Registry would like approved new Technical Assistance Providers and Certifiers as quickly as possible (both the CEC and the Registry have lists of companies that want to apply once the process re-opens), it feels the proposed Rule is seriously flawed in several ways.

Request

The California Climate Action Registry asks that this regulation adoption be postponed for two months to accommodate further review and that the Commission reconsider the content of the regulation. The Registry further suggests that a stakeholder group consisting of current Certifiers and Technical Assistants, those entities that have identified themselves as being interested in applying for these categories in the future, other state agencies, Registry participants, Registry staff, and other interested parties be convened by the CEC to discuss the certification process from start to finish, review the content of the rulemaking, and assess the reasonableness of its provisions.

The California Climate Action Registry does not feel it has been adequately involved in the formation of this Rulemaking, even though the Rule outlines a process to choose Technical Assistance Providers and Certifiers explicitly for the Registry. In Fall 2003 the Registry offered the CEC comments on portions of the draft Rule. We do not see any of those incorporated into the final Rule. The Registry also asked to sit down with CEC staff to help shape the Rule. CEC staff suggested the way for the Registry to be involved in the process was for the Registry to provide comments during the public comment period. Thus, as suggested, we have reviewed the proposed Rule and are expressing our concerns during the public comment period.

Issues

Rather than go through a long line-by-line commentary on the proposed Rule, we have several overarching suggestions.

1. ***Simplify the Rule. Adopt a more flexible Rule that acknowledges that there is still much to learn and adapt.*** In each of the two rounds of Certifier approval conducted by the CEC and the Registry prior to the institution of this Rulemaking, we learned collectively how to make the process better, and did so. There is much more to learn as we go through other rounds. However, this proposed Rule is so prescriptive and detailed that it freezes an immature, incomplete and unproven process in place. This Rule is much too complex – over 70 pages long in all its parts.

The Registry advocates that the Commission adopt a more general Rule that allows us collectively to see what works and what doesn't and then change some elements as we move forward in order to make the process better.

2. ***Address the Function of the Rule Realistically.*** This rule addresses helping to choose Technical Assistance Providers and Certifiers for a non-profit agency, but it reads like it is support for a major state regulation. The Registry is a voluntary, not a regulatory, program.
3. ***Put less of a cost burden on the Applicants, especially Certifiers.*** The CEC asked us to survey current Certifiers to determine what it cost to apply to become a Certifier (under simpler rules than those proposed in this docket). Their average cost per application was \$12,000. Those interested in becoming Registry Certifiers in the future range from non-profit organizations to large international certification and accounting organizations. These costs drive out smaller but qualified players and work against the Registry goal of achieving a good mix of Certifiers to help minimize the costs of Certification.
4. ***Reconsider the most onerous provisions for Certifiers.*** So far the Registry has had one company certify its emissions. Up to twenty entities are expected to certify in the next year, at a cost of certification ranging from \$500 up, with \$10,000 being a likely average. Yet the Certifier provisions in the proposed regulation require Certifier applicants to provide
 - Financial Statements
 - Organizational charts
 - Insurance policies
 - All names, phone numbers, titles, emails, bios, degrees, licenses, training, technical knowledge etc. ***of every employee who might be involved in a certification activity***

- A list of relevant judicial proceedings filed against the applicant
- Three work samples
- Three or more references
- A 4 part detailed description of the Applicant's approach to Certification
- A description of how ongoing training will insure staff knowledge is updated
- An extremely difficult Conflict of Interest filing
- Other information

In addition, all certifiers must have been in business for 4 continuous years, have a minimum revenue of 4 million dollars annually, have a minimum of **15 designated staff to perform Registry certifications(!)**, etc. etc.

5. Adopt a more reasonable Conflict of Interest (COI) Provision.

The Registry feels very strongly that the integrity of Certifiers must be upheld. However, the proposed COI provisions are inappropriate for the current nature of the program and size (\$) of contracts. As mentioned above, the cost requirements adversely affect small Certifiers. Conversely, the COI provisions are likely to drive out large Certifier companies.

In devising the COI Provision, the CEC reviewed several COI approaches in the Rule (EPA, CDM, SEC and ISO), most of which are for regulatory compliance and/or deal with much larger projects than the Registry inventories. The SEC rules seem the farthest afield for what we are doing here. The CDM does not really have COI rules, and is not even fully operational yet. Both the EPA and ISO COI provisions seem more reasonable than the CEC Rule.

Under the proposed CEC Rule, a Registry Certifier hired by a company to certify its GHG emissions in the state of California must provide the CEC with a list of all services it has provided for the company worldwide, certification or GHG-related or not, for the past 3 years, and the future.

This is not realistic. For example: Assume SGS (current Registry Certifier with offices worldwide) is contracted by BP (global company) to certify BP's California GHG emissions. Under the proposed COI in this Rule, if an SGS office in Australia contracted for a service for BP in Shanghai (at a low threshold cost of contract, perhaps \$5,000), it must be reported to the CEC and might be a disqualification. This is not a reasonable provision.

The COI approach in this Rule drives any global company to choose a small Certifier that can pass the COI provisions, rather than the more natural choice of a bigger certification company with the complex knowledge to match the big company issues. We feel this may lead to weaker certifications, where smaller Certifiers are less likely to be able to handle a bigger company's needs. We are already starting to see such problems developing.

There are several COI approaches that could maintain credibility and which seem appropriate. The Registry would like to see the CEC explore options with other stakeholders (as described in our Request above) to come up with a simpler COI policy.

Respectfully Submitted,

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California Climate Action Registry